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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE FILING BY TUCSON
ELECTRIC POWER COMPANY TO AMEND
DECISION NO. 62103.

DOCKET NO. E-01933A-05-0650

**TUCSON ELECTRIC POWER
COMPANY'S REPLY TO
COMMENTS REGARDING
PROPOSED RECOMMENDED
OPINION AND ORDER**

Tucson Electric Power Company ("TEP" or the "Company"), through undersigned counsel, hereby respectfully submits its reply in support of TEP's Proposed Recommended Opinion and Order ("Proposed Recommended Order"). Based upon the various comments submitted by Commission Staff and the Intervenors, TEP believes that the Proposed Recommended Order should be issued by the Administrative Law Judge as the Recommended Opinion and Order to the Commission, with only minor modifications and revisions as noted herein.

I. INTRODUCTION.

As agreed by the parties and ordered by the Administrative Law Judge, TEP prepared the Proposed Recommended Order that detailed a framework for providing the Commission with information regarding market rates and TEP's proposals for modifying the 1999 Settlement Agreement and Decision No. 62103. In drafting the Proposed Recommended Order, TEP sought, in good faith and consistent with the discussions at the hearing, to (i) fairly address the competing interests and positions of the parties involved in this proceeding, and (ii) set forth the basic provisions whereby TEP could present the Commission the additional information without waiving any party's rights.

1 Most parties have been constructive in their comments on the Proposed Recommended
2 Order. Commission Staff's comments generally support, albeit with some proposed clarification,
3 the key concepts of (i) filing the Rate Proposal Docket; (ii) holding rates at current levels after the
4 Fixed CTC expires using an adjustment to the Market Generation Credit ("MGC"); (iii) moving
5 forward with Demand-Side management ("DSM") and TEP's Renewable Energy Action Plan
6 ("REAP") and (iv) preserving the rights of all parties with respect to their positions regarding the
7 1999 Settlement Agreement and Decision No. 62103.

8 Local Union 1116 of the International Brotherhood of Electrical Workers, AFL-CIO
9 ("IBEW"), requests that the Proposed Recommended Order be adopted with minor modification.
10 Mesquite Power, L.L.C. et. al. support the Proposed Recommended Order with the exception of
11 the language in the description of TEP's cost-of-service proposal that indicates that TEP's
12 exclusive CC&N will be restored.

13 The Department of Defense ("DOD") appears to generally support the Proposed
14 Recommended Order. The DOD does, however, take issue with using the MGC as the mechanism
15 for maintaining rates and suggests that it is premature to make a decision on the refunding
16 mechanism and terms for the Fixed CTC revenues collected after expiration of the Fixed CTC.

17 Although the Residential Utility Consumers Office ("RUCO") had indicated at the hearing
18 its preliminary support for filing general rate information and that continuing the collection of
19 Fixed CTC amounts beyond the date the Fixed CTC would otherwise expire "may be acceptable
20 to RUCO," [see Transcript, Vol. III, March 8, 2007, p. 605], RUCO now opposes virtually every
21 provision of the Proposed Recommended Order.

22 The comments filed by Phelps Dodge Mining Company and Arizonans for Electric Choice
23 and Competition (collectively "AECC"), indicate that AECC supports TEP's filing of the Rate
24 Proposals and the initiation of a Rate Proposal Docket. But AECC appears to have changed its
25 position after stating during the hearing that "we're not adverse to working something out with
26 reference to the CTC" provided "those monies that are collected during that period of time might
27 be offset against monies that might be determined as a result of the rate case." See Transcript,

1 Vol. III., March 8, 2007, p. 601. AECC now claims that it “strongly opposes” any proposal for
2 retaining current rate levels after the Fixed CTC expires.

3 Finally, Southwest Energy Efficiency Project (“SWEEP”) and TEP have made proposed
4 revisions to TEP’s DSM Portfolio. SWEEP supports the DSM and related energy efficiency
5 provisions of the Proposed Recommended Order.

6 In short, while there are some differences of opinion regarding certain provisions of the
7 Proposed Recommended Order, there appears to be general consensus and agreement between
8 TEP, Commission Staff, AUIA, IBEW, Mesquite Power and SWEEP concerning the operative
9 provisions of the Proposed Recommended Order.

10 **II. TEP’s REPLY TO PARTIES’ COMMENTS.**

11 **A. Comments on TEP’s Notice of Filing (“Notice”).**

12 In its Comments, Commission Staff indicated that it was concerned with some of the
13 language in TEP’s Notice. Commission Staff was most concerned that the Notice was “couched
14 in such a manner as to convey the impression that other parties may agree with them” and contains
15 various mischaracterizations. *See* Commission Staff Comments, pp. 3-5.

16 To clarify, the Notice was TEP’s cover memorandum to the Proposed Recommended
17 Order and, as Commission Staff suggests, may be considered as TEP’s brief in support of its
18 Proposed Recommended Order. Commission Staff is the only party that took issue with the
19 Notice. TEP believes that the Commission should focus on the Proposed Recommended Order,
20 where Commission Staff and TEP have common ground on the key concepts.

21 **B. Comments on Findings of Fact in Proposed Recommended Order.**

22 Several parties have requested revisions to the “Findings of Fact” contained in the
23 Proposed Recommended Order or “housekeeping” corrections. *See* SWEEP Comments, pp. 2-3;
24 Mesquite Power Comments, pp. 2-3; DOD Comments, ¶1.

25 TEP has no objection to these requests. In drafting the Findings of Fact contained in the
26 Proposed Recommended Order, TEP sought to include relevant procedural and factual background
27 recognizing that other parties might wish to add other findings.

C. Comments on Substantive Provisions of Proposed Recommended Order.

The following discussion summarizes the parties' comments on the four key substantive provisions of the Proposed Recommended Order and includes TEP's reply to those comments and recommendations based on the comments.

1. Comments on General Rate Information.

The Proposed Recommended Order provides for the filing of general rate case information: the Rate Proposals and the Rate Proposal Docket. *See* Proposed ROO, pp. 10-11, ¶ 48.

a. Commission Staff Comments.

Commission Staff indicates that it supports the filing of general rate case information as contemplated by the Proposed Recommended Order. *See* Commission Staff Comments, pp. 2-3. Commission Staff, however, asserts that there should be no doubt as to the nature of the proceeding -- it is a rate case intended to establish TEP's rates commencing January 1, 2009. According to Commission Staff, "the rate case will decide rates, and if necessary, litigation will address TEP's claims relating to the intervening period between approval of the 1999 Settlement Agreement and adoption of new rates." Commission Staff further cautions that "the rate case filing should not be construed as primarily a settlement device." Commission Staff Comments, p.5.

TEP Reply.

TEP is generally in accord with Commission Staff's comments on the general rate information issue. TEP acknowledges that the Rate Proposal Docket is a rate case. The term "Rate Proposal Docket" is used to denote a rate case in which the Commission acknowledges that several generation rate proposals will be included and considered, not just traditional cost-of-service rates. TEP does want to confirm, however, that its submission of several generation rate proposals is intended to reach a "regulatory solution" of the dispute over the 1999 Settlement Agreement and does not constitute a waiver of TEP's rights and claims arising under the 1999 Settlement Agreement and Decision No. 62103 [*see* Transcript, Vol. III, March 8, 2007, pp. 597-

98].¹ TEP also is concerned that the Rate Proposal Docket be processed and decided by the Commission as soon as possible and in advance of December 31, 2008. Finally, Commission Staff states that it “expects” TEP to file market studies in conjunction with its market-related proposals. TEP has no objection to filing such information, but is concerned that any studies it submits will be subject to an undefined “sufficiency” review by Commission Staff. Because there is no established format for such studies in Commission proceedings, they should not be subject to sufficiency review. Commission Staff, and other parties, will have a fully opportunity for discovery concerning the market studies.

b. RUCO Comments.

RUCO opposes TEP’s proposed procedural framework for filing rate case information. RUCO urges the Commission to decide the “Core Question” of whether TEP is entitled to charge market-based rates after 2008 rather than address TEP’s Rate Proposals and not delay a decision to address and consider the general rate information being presented in the Rate Proposal Docket. *See* RUCO Comments, p. 4. According to RUCO, even if the Commission declines to address the “Core Question” at this time, it should still reject the Rate Proposal Docket process because the parties already attempted settlement, and even if a rate settlement is reached, the Commission may reject it, causing further delay in establishing new rates for TEP. *Id.* 10-11.

TEP Reply.

RUCO indicated during the course of the hearing that it lacked sufficient information to fully evaluate TEP’s proposals for amending the 1999 Settlement Agreement and that it was open to establishing a procedure for TEP to file rate case information to gain a “full development of the record so that the Commission could consider all of the options and also reach a resolution based on the complete record before January 1, 2009.” *See* Transcript, Vol. III, March 8, 2007, pp. 605-606. However, RUCO now backs away from that position and urges the Commission to simply

¹ TEP understands that Commission Staff agrees that TEP’s rights and claims under the 1999 Settlement Agreement and Decision No. 62103 are preserved with respect to any rate order in the Rate Proposal Docket even though TEP is filing generation proposals that are not market-based. *See* Commission Staff Comments, p. 5. Similarly, other parties to the 1999 Settlement Agreement would retain the same rights even though they participate in the Rate Proposal Docket and consider generation options other than traditional cost of service rates.

1 rule on the legal or "Core Question" presented by the 1999 Settlement Agreement and then order
2 TEP to file a traditional cost-of-service rate case. In effect, RUCO has retreated to its litigation
3 position and is the only party to take the position that the Commission should not adopt TEP's
4 framework for providing full rate case information through the Rate Proposal Docket.

5 RUCO's position is simply contrary to the efforts to reach a regulatory solution that would
6 obviate the need to litigate the 1999 Settlement Agreement now. If RUCO's position were
7 adopted, the Commission would ignore any regulatory solution and potentially force the parties
8 into litigation. Moreover, RUCO fails to acknowledge that, while the parties to this proceeding
9 may not have reached a settlement, the additional information to be presented will be before the
10 Commission for the Commissioners' review and vote.

11 **c. DOD Comments.**

12 DOD offers no objection to TEP filing general rate case information as proposed in the
13 Proposed Recommended Order. *See* DOD Comments. DOD does, however, take issue with the
14 findings in the Proposed Recommended Order that imply that the other parties merely lacked
15 understanding of TEP's market and cost of service proposals. *Id.*, ¶1. DOD suggests that a
16 summary of the testimony positions of the parties be included in the Proposed Recommended
17 Order. *Id.*

18 **TEP Reply.**

19 TEP has no objection to the DOD suggestion and the inclusion of a summary of the
20 parties' testimony on TEP's proposals.

21 **d. IBEW Comments.**

22 IBEW supports the Proposed Recommended Order but returns to its prior argument that
23 TEP can achieve the same goals by simply withdrawing the pending motion to amend and instead
24 filing a general rate case. *See* IBEW Comments, p. 2-3.

25 **TEP Reply.**

26 Although TEP appreciates the IBEW's support of its Proposed Recommended Order, TEP
27 disagrees with IBEW's opinion. One of the key elements of seeking a regulatory solution is

1 preservation of all parties' rights under the 1999 Settlement Agreement and this docket provides a
2 vehicle to confirm that element. Simply filing a rate case would not achieve this indispensable
3 part of the process described in the Proposed Recommended Order.

4 **e. AECC Comments.**

5 AECC indicates that it has no objection to TEP filing its Rate Proposals and to considering
6 the information in the Rate Proposal Docket. According to AECC, "[a]s a general proposition,
7 AECC does not object to TEP's proposal to provide additional information in order to further
8 settlement discussions among the parties." See AECC Comments, p. 2. Further, "AECC is
9 willing to participate in such discussions and is open to receiving further information concerning
10 the 'hybrid proposal' introduced in the testimony of James Pignatelli." *Id.* At the same time,
11 however, AECC asserts that the recitation of TEP's filed proposals in paragraphs 42-46 of the
12 Proposed Recommended Order provides disproportionate weight to these proposals, all of which
13 are strongly opposed by AECC, RUCO, DOD and Commission Staff. *Id.*, p. 5.

14 **TEP Reply.**

15 TEP has no objection to including a recitation of the positions of AECC and other parties
16 in the Proposed Recommended Order. To the extent that AECC is concerned that the Proposed
17 Recommended Order may be read to preclude parties from challenging any and all of TEP's
18 generation proposals, TEP submits that it was not the intent to preclude parties from challenging
19 TEP's proposals. TEP also believes parties would be able to suggest additional or modified
20 generation proposals as appropriate in rebuttal in the Rate Proposal Docket.

21 **f. Mesquite Power Comments.**

22 Mesquite Power has no objection to TEP filing its Rate Proposals and appears to generally
23 support Proposed Recommended Order. Mesquite Power's principal concern and objection is
24 with any language in the Proposed Recommended Order that appears to indicate that TEP's
25 exclusive CC&N will be restored or appears to prejudge the issue. See Mesquite Power
26 Comments, p.2.

TEP Reply.

TEP agrees that the issue of exclusivity remains to be considered and addressed in the Rate Proposal Docket.

g. AUIA Comments.

The AUIA supports the Proposed Recommended Order and urges the Commission to adopt it.

TEP Reply.

TEP agrees with AUIA.

h. TEP Recommendation.

Based upon all of the comments and support of the parties, TEP believes that the "General Rate Information" provisions of the Proposed Recommended Order should remain unchanged except as otherwise noted herein. TEP agrees that the Rate Proposals equate to a rate case provided the parties' rights and claims under the 1999 Settlement Agreement and Decision No. 62103 are preserved.

2. Comments on Existing Rates Remaining in Effect Pending Decision.

The Proposed Recommended Order provides for existing rates to remain in effect pending a decision in the Rate Proposal Docket. *See* Proposed ROO, pp. 11-12, ¶¶ 49 - 51.

a. Commission Staff Comments.

Commission Staff does not oppose modifying the MGC to hold rates at current levels provided that (i) proposed change to the MGC does not constitute agreement that the MGC is a "rate"; and (ii) any revenue collected by this device is specifically tracked and accrues interest at "rate equal to weighted average cost of capital as established in last rate proceeding, computed monthly on compounded basis." *See* Commission Staff Comments, p. 6. Commission Staff also does not oppose a 24 month refund period but believes that "whether and how any refunds should occur should be decided in connection with the rate decision." *Id.*

TEP Reply.

TEP is willing to accept a modification to the Proposed Recommended Order that clarifies

1 that the "True-Up Revenue" will be tracked and accrue interest on any portion thereof to be
2 refunded at an appropriate rate of interest compounded monthly,² with the decision of whether and
3 how any refunds or credits of the "True-Up Revenue" should occur being decided by the
4 Commission in connection with the Rate Proposal Docket provided that a decision on TEP's Rate
5 Proposals is made as soon as possible, and in advance of December 31, 2008.

6 There are significant adverse financial impacts to TEP if a decision on new rates and the
7 accounting treatment of the True-Up Revenue is not reached well in advance of December 31,
8 2008. For example, if TEP were not able to recognize any of the True-Up Revenues on its income
9 statement in 2008, the impact on TEP's net income would be a reduction equal to approximately
10 57% of the Company's net income for all of 2006. To that end, TEP believes that it is appropriate
11 that the accumulation of True-Up Revenue ends when new rates are in place which should be no
12 later than December 31, 2008.

13 **b. RUCO Comments.**

14 RUCO opposes holding rates at current levels when the Fixed CTC expires "because no
15 party disputes that Settlement Agreement requires that the Fixed CTC . . . terminates after it
16 collects \$450 million of stranded costs." *See* RUCO Comments, p.7.

17 In addition, RUCO opposes the proposed true-up mechanism in the Proposed
18 Recommended Order because it believes it is inadequate to protect customers. RUCO contends
19 that the Proposed Recommended Order defines "True-Up Revenue" too narrowly by limiting it to
20 revenue collected before December 31, 2008, and failing to provide for interest. Finally, RUCO
21 objects to use of the MGC as a mechanism for holding current rate levels. *See* RUCO Comments,
22 p. 8-11.

23 **TEP Reply.**

24 RUCO's position against holding current rate levels to avoid a significant rate fluctuation
25 is somewhat surprising given the testimony of Marylee Diaz Cortez that one of the principal
26

27 ² TEP does not believe that the "weighted average cost of capital as established in TEP's last rate proceeding" is an appropriate rate of interest. TEP believes that the rate on short-term debt is a more appropriate rate.

1 concerns of residential customers was rate stability ("I do think I can agree to a certain extent with
2 Mr. Pignatelli that stability of rates, so there aren't big surprises, is important to the average
3 residential customer." *See* Hearing Transcript, March 8, 2007, Vol. III, p. 655). At the same time,
4 RUCO's position that TEP should be bound by the terms of the 1999 Settlement Agreement and
5 suffer more under-earning when the Fixed CTC drops off in May 2008 is inconsistent with
6 RUCO's statement that it has no opinion on whether TEP remains bound by the 1999 Settlement
7 Agreement. *See* Hearing Transcript, March 8, 2007, Vol. III, p. 652. The potential loss of
8 approximately 57% of the Company's net income and its corresponding impact on both TEP's
9 creditworthiness and ability to provide safe, reliable and adequate service to its customers is
10 neither a fair nor rational regulatory result. A December 31, 2008 target for deciding this case will
11 give the parties and the Commission 18 months to address and resolve these issues.

12 **c. DOD Comments.**

13 As stated in its Comments, "[t]he DOD agrees with the stable-rate objective discussed in
14 Finding 49." *See* DOD Comments, ¶ 2. The DOD, however, does not agree that a modification of
15 the MGC is the appropriate mechanisms for keeping rates at their current levels. The DOD also
16 takes issue with the manner in which True-Up Revenues are defined and credited under the terms
17 of the Proposed Recommended Order. Finally, DOD asserts that the Proposed Recommended
18 Order should simply state that rates will remain unchanged and that the disposition of accumulated
19 Fixed CTC credits will be dealt with in the upcoming rate case -- similar to the position taken by
20 Commission Staff. *Id.*, ¶¶ 2, 3.

21 **TEP Reply.**

22 As with Commission Staff's Comments to this provision, TEP is amenable to allowing the
23 specific mechanism to refund the accumulated True-Up Revenue to be resolved in the Rate
24 Proposal Docket provided a Commission decision is in effect prior to December 31, 2008.

25 **d. AECC Comments.**

26 Like RUCO, the AECC opposes holding rates at current levels when Fixed CTC expires.
27 According to the AECC, the Proposed Recommended Opinion eliminates significant customer

benefits under 1999 Settlement Agreement with no benefit to customers. *See* AECC Comments, p. 2. AECC also contends that the only acceptable method for holding rates at current levels is to track and fully credit all Fixed CTC revenue when new rates are established irrespective of the rate methodology or rate level. *Id.*, p. 4. Finally, the AECC asserts that there is no need to modify the MGC to hold rates level. *Id.*, p. 5.

TEP Reply.

The inconsistencies in the AECC's position continue to plague its involvement in this case. AECC acknowledges that the purpose of the 1999 Settlement Agreement was to transition TEP to a competitive retail generation market, but at the same time asserts that there is no retail competition to justify market-based rates. AECC further contends that even if there was retail competition, TEP is not entitled to charge market-based rates because the Commission's Track A Order and the Court of Appeals' *Phelps Dodge* decision effectively eliminated market-based generation rates. And yet, despite all these claims, and the fact that AECC has acknowledged that TEP is experiencing a revenue deficiency going back to 2003, AECC wants TEP to continue to operate under the rate freeze and the substantial rate reduction that will result when the Fixed CTC drops off in May 2008 based on the 1999 Settlement Agreement. AECC simply cannot have it both ways. It cannot argue for its benefits of the bargain, while simultaneously arguing that TEP has lost all of its benefits.

e. IBEW, Mesquite Power, and SWEEP Comments.

IBEW, Mesquite Power and SWEEP had no comment on or objection to the provisions of the Proposed Recommended Order concerning maintaining rates at current levels and the provision that relate to the mechanism for maintaining rates or the provisions dealing with how collected revenues may or may not be credited to customers.

f. TEP Recommendation.

Contingent upon a Commission decision being issued by December 31, 2008, TEP agrees that the Proposed Recommended Order may be revised to provide that the "True-Up Revenue" will be tracked, and will accrue interest on any portion thereof to be refunded at an appropriate

1 rate of interest compounded monthly. Moreover, the decision of whether and how any refunds or
2 credits of the "True-Up Revenue" should occur may be decided by the Commission in connection
3 with the Rate Proposal Docket. TEP continues to believe that modifying the MGC remains the
4 best mechanism for holding rates at their current level, but does not oppose language that
5 preserves any party's position that the MGC is not a mechanism to set generation rates.

6 **3. Comments on Full Reservation of Rights.**

7 The Proposed Recommended Order provides for the reservation of all rights of all parties
8 in moving forward with the Rate Proposals and the Rate Proposal Docket. See Proposed ROO, pp.
9 13, ¶¶53-54.

10 **a. RUCO Comments.**

11 Only RUCO took issue with the provisions of the Proposed Recommended Order that seek
12 to preserve and reserve the rights of TEP and all other parties in moving forward with the filing of
13 general rate case information and consideration of that information in connection with TEP's
14 proposals in the Rate Proposal Docket. According to RUCO, the Commission does not have
15 authority to declare that RUCO's or other parties rights are reserved with respect to parties other
16 than Commission. See RUCO Comments, p. 12

17 **TEP Reply.**

18 RUCO's position rejects the positions of the other parties that, in moving forward with the
19 Rate Proposal Docket, all parties' rights and claims arising from the 1999 Settlement Agreement
20 and Decision No. 62103 are reserved and protected. See Commission Staff Comments, p. 5 ("just
21 as TEP retains its right to claim that it is entitled to "contractual" damages, or other claims
22 associated with its view of the effect of the Settlement and Decision No. 62103, the other parties
23 to this proceeding retain their rights to dispute those claims and otherwise assert that TEP has no
24 contractual claim."). Again, RUCO's position undermines the Commission's and parties' attempt
25 to reach a regulatory solution of the dispute over the 1999 Settlement Agreement.

26 The import of this provision is: (i) the acknowledgment by the Commission and parties
27 that no rights or claims under the 1999 Settlement Agreement and Decision No. 62103 are waived

1 with respect to the Commission's decision in the Rate Proposal Docket and (ii) the Commission
2 not taking an action that would require TEP, or any other party, to seek timely relief in court to
3 protect their rights under the 1999 Settlement Agreement and Decision No. 62103. All generation
4 rate options are still at issue and all rights under the 1999 Settlement Agreement and Decision No.
5 62103 are preserved. Commission Staff agrees that should TEP or any other party seek to
6 challenge the rates established in that docket, TEP or those parties should have the right to assert
7 issues related to the 1999 Settlement Agreement and Decision No. 62103 in any court challenge to
8 those rates. *See* Commission Staff Comments, p. 5. Through their comments, no party has
9 opposed RUCO's or any other parties' reservation of rights and claims under the 1999 Settlement
10 Agreement and Decision No. 62103.

11 **b. Other Comments.**

12 No other party has objected to or challenged the reservation of rights provision contained
13 in the Proposed Recommended Order.

14 **c. TEP Recommendation.**

15 TEP believes that the "Full Reservation of Rights" provisions of the Proposed
16 Recommended Order should remain unchanged.

17 **4. *Comments on Demand-Side Management Portfolio, Time-Of-Use Rates and***
18 ***Renewable Energy Action Plan.***

19 The Proposed Recommended Order provides for the approval, implementation, and
20 recovery of costs associated with TEP's DSM, TOU, and REAP. *See* Proposed ROO, pp. 12-13,
21 ¶52.

22 **a. Commission Staff, RUCO and AECC Comments.**

23 Commission Staff, RUCO, and AECC appear to share the view that cost recovery for DSM
24 costs must occur in connection with a general rate case based on findings of fair value.

25 Commission Staff's Comments indicate that it agrees that DSM programs should be
26 considered by the Commission and approved in an expeditious manner, but that program costs that
27 exceed costs embedded in current rates should be capitalized, to be recovered in rates to be

1 determined in the upcoming rate case. *See* Commission Staff Comments, p. 6.

2 RUCO's Comments also indicate that RUCO opposes adoption of any cost recovery
3 mechanism for DSM or REAP in a proceeding that would not include data necessary to make fair
4 value finding. *See* RUCO Comments, pp. 14-15.

5 Similarly, AECC opposes any change in rates for cost recovery of DSM or REAP outside
6 of general rate case. *See* AECC Comments, p. 5

7 **TEP Reply.**

8 The comments and positions of these parties appear to be at odds with the view of some
9 members of the Commission who, at the very least, sought information regarding the
10 implementation of DSM, TOU, and renewable energy programs in connection with this
11 proceeding, a proceeding that does not involve a fair value finding, and at least until now, did not
12 involve a general rate case. Accordingly, TEP has followed the direction of the Commission in
13 Decision No. 68669 and has included a procedure for obtaining approval and cost recovery for
14 new DSM and REAP programs. As indicated below, the provisions contained in the Proposed
15 Recommended Order have the support of SWEEP, including how to implement and secure cost
16 recovery for TEP's DSM programs.

17 **b. SWEEP Comments.**

18 SWEEP supports the provisions of the Proposed Recommended Order concerning the
19 approval and implementation of a new DSM program together with the approval and
20 implementation of a mechanism for recovering the costs of the program. SWEEP understands that
21 implementation and cost recovery go hand in hand, and SWEEP has urged that the procedures set
22 forth in the Proposed Recommended Order be approved and adopted. *See* SWEEP Comments.

23 **c. Other Comments.**

24 No other party objected to or commented upon the provisions of the Proposed
25 Recommended Order that relate to DSM, TOU, or REAP.

1 **d. TEP Recommendation.**

2 TEP understands from the comments filed in response to the Proposed Recommended
3 Order that the parties differ in their opinions on where DSM and renewable energy issues are best
4 addressed. TEP proposed two options in an attempt to address all concerns raised throughout the
5 filed and live testimony in this proceeding. While TEP remains willing and able to file its DSM
6 and REAP proposals separately from or together with the Rate Case Proposals, it is inappropriate
7 and inconsistent with the testimony in this proceeding, to separate the evaluation and approval of a
8 DSM portfolio from the evaluation and approval of cost recovery of such portfolio.

9 TEP therefore disagrees with Commission Staff's proposal to file DSM and REAP
10 proposals as soon as possible only to later determine the amount and schedule of DSM costs to be
11 recovered. Not only does such a suggestion delay recovery of real costs for TEP, but it fails to
12 give TEP the required assurances that the Company will, in fact, recover those costs its expends
13 on implementing the DSM portfolio. Thus, TEP remains willing to file DSM and REAP proposals
14 separately from the Rate Case Proposals, and consistent with SWEEP's request, separately from
15 one another. However, TEP believes it is inappropriate, and frankly confiscatory, to require the
16 Company to file and implement a DSM portfolio, with the mere possibility of full recovery
17 potentially years after such implementation.

18 **5. Comments on Conclusions of Law and Ordering Paragraphs.**

19 No party objected to or commented upon the Conclusions of Law paragraphs of the
20 Proposed Recommended Order.

21 **a. RUCO Comments.**

22 Only RUCO addressed the Ordering paragraphs of the Proposed Recommended Order.
23 RUCO objects that "no ordering paragraphs adopt... the [true-up] mechanism, or any other
24 provision for true-up." RUCO Comments, p. 8.

25 **TEP Reply.**

26 The intent of TEP's Proposed Recommended Order is clear that if current rates remain in
27 force, the incremental amount collected after the Fixed CTC expires will be considered "True-Up

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Revenue" as discussed above. See Proposed ROO, Findings of Fact, ¶ 51.

b. TEP Recommendation.

Adding a specific ordering paragraph will clarify the intent of the Proposed Recommended Order. Accordingly, TEP recommends that the following ordering paragraph be added:

IT IS FURTHER ORDERED that the incremental revenue collected as a result of keeping retail Standard Offer rates at their current level shall be treated as "True Up Revenue" as discussed in Finding of Fact No. 51, interest will accrue on the portion of the True-Up Revenue to be refunded at a rate of interest equal to TEP's rate on short-term debt, and the decision of whether and how the True-Up Revenue will be refunded, including the mechanism for refund (if necessary) will be determined in the Rate Proposal Docket.

III. CONCLUSION.

TEP still believes that its Proposed Recommended Order, with the modifications and clarifications discussed in this Reply, is just, reasonable, fair and in the public interest and should be issued as the Recommended Opinion and Order in this docket.

RESPECTFULLY SUBMITTED this 4th day of April 2007.

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